

REMARKS

This Reply and Amendment is intended to be completely responsive to the non-final Office Action dated January 25, 2006. Claims 1-12 and 14-43 are pending in this Application. Claims 1-12, 14-32 and 34-43 stand rejected, and Claim 33 is objected to. Independent Claims 1 and 24 have been amended.

The Applicant acknowledges the Examiner's withdrawal of the allowance of Claims 24-43.

Claim Rejections – 35 U.S.C. § 103(a)

Claims 1-11

In Section 3 of the Office Action, the Examiner rejected Claims 1, 2 and 4-9 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,344,296 issued to Staples et al. ("Staples et al.") in view of U.S. Patent No. 3,210,957 issued to Rutishauser et al. ("Rutishauser et al."). Dependent Claims 3, 10 and 11 were rejected under 35 U.S.C. § 103(a) in view of additional references.

Staples et al.

Staples et al. discloses a "two-stage cooling system" (col. 1, lines 8-9), however, as the Examiner correctly noted "Staples et al. does not disclose [a] modular unit" (see Section 3 of the Office Action). Staples et al. does not disclose, teach or suggest a modular cooling element for customizing a temperature distribution profile of products within the refrigerated space. Staples et al. also does not disclose, teach or suggest a modular cooling element that can be placed at various locations within the refrigerated storage space to provide supplemental cooling at such locations.

Rutishauser et al.

Rutishauser et al. discloses “arranging a plurality of display cases ... in adjacent positions ... to form an assembly wherein each case or section has chamber [10] therein for receiving a refrigerating unit [12].” “The refrigeration units ... each has a compressor and a water cooled condenser.” “The units are constructed so that they may be individually moved into or out of the chamber in any of the display cases without disturbing any other unit or display case” (see col. 1, lines 63-72 and col. 2, line 1). “Each unit [12] further is removable from the display case so that it may be readily replaced by another similar unit while the first is taken to a centrally located shop or location for repair” (see col. 2, lines 17-20). The cases have “a chamber 10 [that] is located beneath the bottom 9 of the display space of the case” designed “to receive a refrigerating unit 12” and through which “the refrigerating unit 12 can be inserted and removed” (see col. 3, lines 64-70).

Rutishauser et al. is expressly directed to solving the problem where “the manufacturers or users of refrigeration equipment must maintain a large staff of highly trained service men available at all times and send them about the country or area where the stores are located to assure continued and proper operation of the equipment” (see col. 1, lines 52-56).

Rutishauser et al. shows only that the “refrigeration unit 12” is “removable” from a “chamber” beneath the refrigerated space of the case so that the unit may be readily replaced for maintenance. Rutishauser et al. does not disclose, teach or suggest a modular cooling element for customizing a temperature distribution profile of products within the refrigerated space. Rutishauser et al. also does not disclose, teach or suggest a modular cooling element that can be placed at various locations within the refrigerated storage space to provide supplemental cooling at such locations.

Claims 1-11

Claim 1 is in independent form. Dependent Claims 2-11 depend from independent Claim 1. Claim 1 (as amended) recites a “modular refrigeration system” comprising, in combination with other elements, a “supplemental modular cooling element configured for placement at any one of a plurality of locations within the space” to “provide supplemental cooling at the location.”

The “modular refrigeration system” of Claim 1 (as amended) is not disclosed, taught or suggested by Staples et al. alone or in any proper combination with Rutishauser et al. Further, to transform the “second stage cooling system” of Staples et al., alone or in any proper combination with the “refrigeration unit [that] is removable and replaceable for adjustment or repair” of Rutishauser et al. would require still further modification, and such modification is taught only by the Applicant’s own disclosure.

The subject matter recited in independent Claim 1 (as amended), considered as a whole, would not have been obvious based on Staples et al. in view of Rutishauser et al. under 35 U.S.C. § 103(a).

The Applicant respectfully requests withdrawal of the rejection of Independent Claim 1 under 35 U.S.C. § 103(a), and allowance of independent Claim 1 (as amended), and dependent Claims 2-11, as they depend from independent Claim 1 (see 35 U.S.C. § 112 ¶ 4).

Claims 12 and 14-23

In Section 6 of the Office Action, the Examiner rejected Claims 12 and 14-22 under 35 U.S.C. § 103(a) as being unpatentable over Staples et al. in view of Rutishauser et al. and further in view of U.S. Patent No. 5,924,297 issued to Wolff et al. (“Wolff et al.”). Dependent Claim 23 was rejected under 35 U.S.C. § 103(a) in view of additional references.

Wolff et al.

Wolff et al. discloses a “refrigerated merchandiser” with “plural modular evaporator coil sections 22 [122, 222, 322]” that are shown as described as located beneath or behind a product cooling zone 18. Wolff et al. does not disclose, teach or suggest a modular cooling element for customizing a temperature distribution profile of products within the refrigerated space. Wolff et al. also does not disclose, teach or suggest a modular cooling element that can be placed at various locations within the refrigerated storage space to provide supplemental cooling at such locations.

Claims 12 and 14-23

Claim 12 is in independent form. Dependent Claims 14-23 depend from independent Claim 12. Claim 12 recites a “system for customizing a temperature distribution profile with a space of a temperature controlled case” comprising, in combination with other elements, a “a first heat exchanger in a substantially fixed location and a coolant configured to cool the space” and a “second heat exchanger configured for selective placement at a desired location within the space.”

The “system for customizing a temperature distribution profile with a space of a temperature controlled case” of Claim 12 is not disclosed, taught or suggested by Staples et al. alone or in any proper combination with Rutishauser et al. and/or Wolff et al. Further, to transform the “second stage cooling system” of Staples et al., alone or in any proper combination with the “refrigeration unit [that] is removable and replaceable for adjustment or repair” of Rutishauser et al. and/or the merchandiser with coils beneath or behind the product cooling zone of Wolff et al. would require still further modification, and such modification is taught only by the Applicant’s own disclosure.

The subject matter recited in independent Claim 12, considered as a whole, would not have been obvious based on Staples et al. in view of Rutishauser et al. and/or Wolff et al. under 35 U.S.C. § 103(a).

The Applicant respectfully requests withdrawal of the rejection of Independent Claim 12 under 35 U.S.C. § 103(a), and allowance of independent Claim 12, and dependent Claims 14-23, as they depend from independent Claim 12 (see 35 U.S.C. § 112 ¶ 4).

Claims 24-33

In Section 3 of the Office Action, the Examiner rejected Claims 24-33 under 35 U.S.C. § 103(a) as being unpatentable over Staples et al. in view of Rutishauser et al. Claim 33 is indicated to be allowable if rewritten in independent form.

Claim 24 is in independent form. Dependent Claims 25-32 depend from independent Claim 24. Claim 24 (as amended) recites a “temperature controlled case having a modular cooling system” comprising, in combination with other elements, a “supplemental cooling element configured to interface with the cooling system and to receive a supply of the coolant” wherein the “supplemental cooling element is configured to be selectively mounted at any one of a plurality of locations within the space.”

The “temperature controlled case having a modular cooling system” of Claim 24 (as amended) is not disclosed, taught or suggested by Staples et al. alone or in any proper combination with Rutishauser et al. Further, to transform the “second stage cooling system” of Staples et al., alone or in any proper combination with the “refrigeration unit [that] is removable and replaceable for adjustment or repair” of Rutishauser et al. would require still further modification, and such modification is taught only by the Applicant’s own disclosure.

The subject matter recited in independent Claim 24, considered as a whole, would not have been obvious based on Staples et al. in view of Rutishauser et al. under 35 U.S.C. § 103(a).

The Applicant respectfully requests withdrawal of the rejection of Independent Claim 24 (as amended) under 35 U.S.C. § 103(a), and allowance of independent Claim 24, and dependent Claims 25-33, as they depend from independent Claim 24 (see 35 U.S.C. § 112 ¶ 4).

Claims 34-43

In Section 3 of the Office Action, the Examiner rejected Claims 34-37 and 39-43 under 35 U.S.C. § 103(a) as being unpatentable over Staples et al. in view of Rutishauser et al. Dependent Claim 38 was rejected under 35 U.S.C. § 103(a) in view of Wolff et al.

Claim 34 is in independent form. Dependent Claims 35-43 depend from independent Claim 34. Claim 34 recites a “method of customizing a temperature distribution profile within a refrigeration device” comprising, in combination with other elements, the steps of “identifying at least one location within the refrigeration device having a temperature above a desired temperature range” and “providing a modular cooling element configured for installation at the location.”

The “method of customizing a temperature distribution profile within a refrigeration device” of Claim 34 is not disclosed, taught or suggested by Staples et al. alone or in any proper combination with Rutishauser et al. and/or Wolff et al. Further, to transform the “second stage cooling system” of Staples et al., alone or in any proper combination with the “refrigeration unit [that] is removable and replaceable for adjustment or repair” of Rutishauser et al. would require still further modification, and such modification is taught only by the Applicant’s own disclosure.

The subject matter recited in independent Claim 34, considered as a whole, would not have been obvious based on Staples et al. in view of Rutishauser et al. under 35 U.S.C. § 103(a).

The Applicant respectfully requests withdrawal of the rejection of Independent Claim 34 under 35 U.S.C. § 103(a), and allowance of independent Claim 34, and dependent Claims 35-43, as they depend from independent Claim 34 (see 35 U.S.C. § 112 ¶ 4).

* * *

The Applicant respectfully submits that all outstanding rejections to the claims have been overcome and that the Application is in condition for allowance. The Applicant respectfully requests reconsideration and allowance of Claims 1-12 and 14-43.

* * *

The Examiner is invited to contact the undersigned by telephone if the Examiner believes that a telephone interview or an Examiner's Amendment would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

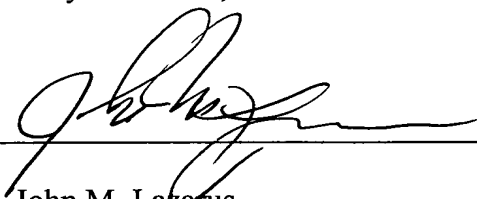
If any extensions of time are needed for timely acceptance of papers submitted herewith, the Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date

3/24/2006

By



FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (414) 297-5591
Facsimile: (414) 297-4900

John M. Lazarus
Attorney for the Applicant
Registration No. 48,367